

COMMISSIONERS APPROVAL

GRANDSTAFF *CG*

ROKOSCH *JCA*

THOMPSON

CHILCOTT *AC*

DRISCOLL *VD*

PLETTENBERG (Clerk & Recorder)

Date.....December 22, 2008

Members Present.....Commissioner Carlotta Grandstaff, Commissioner Jim Rokosch, Commissioner Alan Thompson, Commissioner Greg Chilcott and Commissioner Kathleen Driscoll

Minutes: Glenda Wiles

► The Board met in a public hearing on a Request for Commission Action on the Nighthawk Meadows Major Subdivision. Present was Planner Randy Fifrick, the Developer and the Developers Representative

No conflict of interest was noted. Randy gave an overview of the Request as follows:

**NIGHTHAWK MEADOWS (MAGIC MOUNTAIN)
SIX-LOT MAJOR SUBDIVISION**

STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS

CASE PLANNER: Randy Fifrick

**REVIEWED/
APPROVED BY:** Tristan Riddell

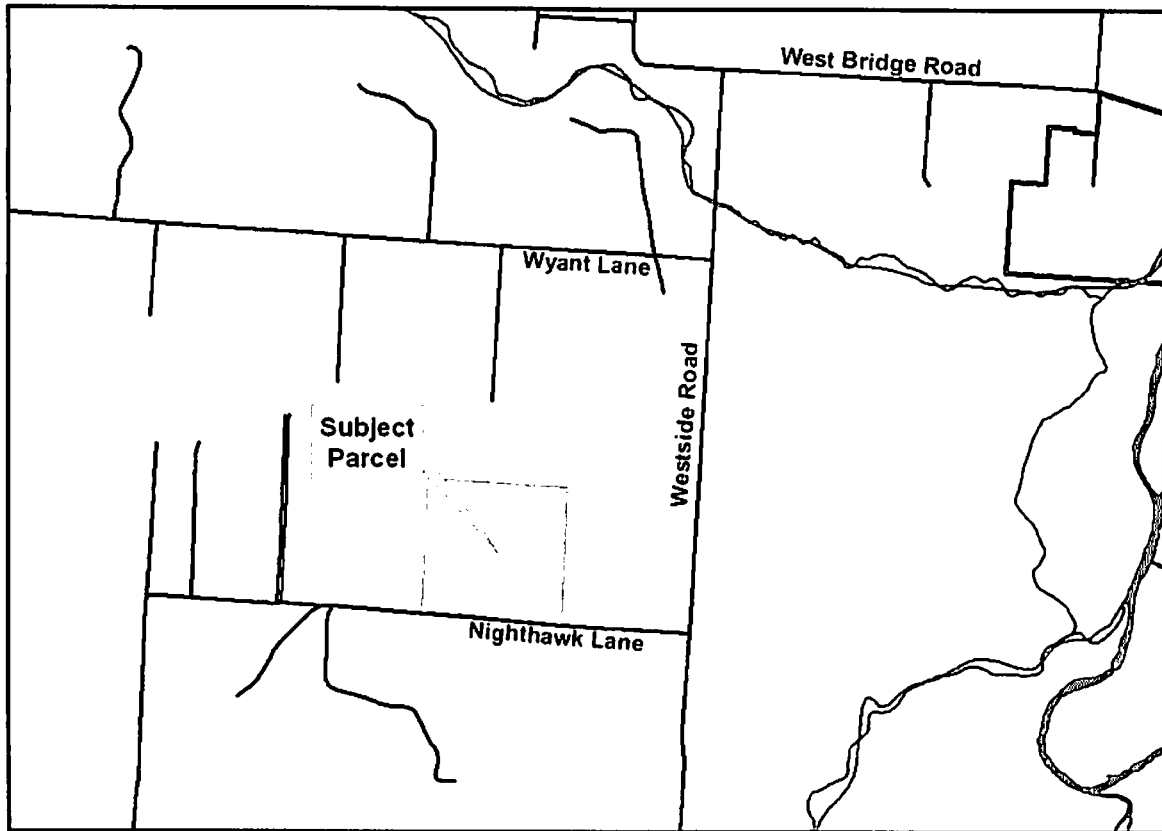
PUBLIC HEARINGS/ Planning Board Public Meeting: 7:00 p.m.
December 3, 2008

MEETINGS: BCC Public Hearing: 9:00 a.m.
December 22, 2008
Deadline for BCC action (60 working days):
January 30, 2009

APPLICANT/ OWNER: Mountain Magic, LLC
610 N 1st Street
Hamilton, MT 59840

REPRESENTATIVE: Professional Consultants, Inc.
1713 N. 1st Street
Hamilton, MT 59840

LOCATION OF REQUEST: The property is located west of Hamilton off Nighthawk Lane. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

Tract B of COS# 3971, located in Sections 34-35,
T6N, R21W, P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision application was deemed complete on October 30, 2008. Agencies were notified of the subdivision on July 22, 2008 and November 5, 2008. Comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-14 of the staff report. **This subdivision is being reviewed under the subdivision regulations amended May 24, 2007.**

LEGAL NOTIFICATION:

A legal advertisement was published in the Ravalli Republic on Tuesday, November 25, 2008. Notice of the project was posted on the property and adjacent property owners were notified by certified mail dated November 5, 2008. One written public comment has been received to date (Attachment A).

**DEVELOPMENT
PATTERN:**

Subject property	Vacant
North	Residential
South	Residential and Agricultural
East	Residential and Agricultural
West	Residential and Agricultural

INTRODUCTION

The Nighthawk Meadows Major Subdivision is a six-lot split proposed on 20.06 acres. The subject property is currently vacant, and is proposed for single-family dwellings. A wetland delineation was performed by the consultant. The identified wetlands have been labeled on the preliminary plat. The applicant is proposing individual wells and a community wastewater treatment facility to serve all lots.

Staff recommends conditional approval of the subdivision proposal.

RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS
DECEMBER 22, 2008

NIGHTHAWK MEADOWS
SIX-LOT MAJOR SUBDIVISION

RECOMMENDED MOTION

That the Nighthawk Meadows Major Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report. *(Staff Note: Prior to making a decision on the subdivision, the BCC must determine the appropriate parkland dedication.)*

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Agriculture)*

Notification of Irrigation Facilities and Easements. Within this subdivision there is an irrigation easement, as shown on the final plat. All downstream water users have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. Activities associated with the maintenance of irrigation facilities may include the operation of heavy equipment, the occasional burning of ditch vegetation, and the use of herbicides. Downstream water right holders must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance, which includes but is not limited to the placement of structures or the planting of vegetation other than grass, is expressly prohibited. *(Section 3-2-8(a) and Section 3-2-8(b)(v)(B), RCSR, Effects on Agricultural Water User Facilities)*

Notification of Easement for Wastewater Treatment System. There is an easement for the community wastewater treatment system located on Lot 3, as shown on the final plat. Any act that interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance, which includes but is not limited to the placement of structures or the planting of vegetation other than grass, is expressly prohibited. *(Section 3-2-8(b)(v)(B), RCSR, Public Health and Safety)*

Notification of Water Rights. Lots within this subdivision do not currently have the right to take irrigation water out of the ditch located within the subdivision. Taking water without a water right for irrigation purposes is illegal. *(Section 3-2-8(b)(v), Effects on Agricultural Water User Facilities)*

Limitation of Access onto a Public Road. A "no-ingress/egress" restriction exists along the Nighthawk Lane frontage of this subdivision, excepting the approved approach to Tail Feather Lane. All lots within this subdivision must use the approved approach. Locations of the no-ingress/egress restrictions can be found on a reduced copy of the final plat. *[The applicant shall provide a reduced copy of the plat showing the no-ingress/egress zones.]* This limitation of access may be lifted or amended only with the approval of the Board of Ravalli County Commissioners. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services and Public Health and Safety)*

Notification of Road Maintenance Agreement. The internal subdivision road, Tail Feather Lane, and the adjacent trail are not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A road maintenance agreement for these roads was filed with this subdivision and outlines which parties are responsible for maintenance and under what conditions. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services)*

Notification of No-Build/Alteration Zones. Within this subdivision there are no-build/alteration zones, as shown on the final plat, to restrict building in areas with natural features such as wetlands and wetland vegetation. No new structure may be constructed in these areas. No new utilities may be constructed in these areas. No fill may be placed in these areas and the vegetation shall be retained in its natural condition. Roads, trails, and utility crossings through these areas are not permitted. Public road and utility easements, as shown on the preliminary plat, are not included in the no-build/alteration zones, nor shall the driveway access to Lot 6. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Natural Environment and Wildlife & Wildlife Habitat)*

Notification of Very Limited Soils. Within this subdivision there are areas of the property identified as potentially having soils rated as limited for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the very limited soils in question are included as exhibits to this document *[the applicant shall include the reduced plat and exhibits as attachments]*. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Public Health and Safety)*

Wood Stoves. The County recommends that home owners refrain from installing wood stoves if possible. The County further recommends that wood and other biomass burning stoves not be used as the primary heat

source. If a homeowner chooses to burn wood as a back-up heat source, the County strongly encourages them to install an EPA-certified wood stove as the best option to reduce air pollution and more specifically, to install an EPA-certified pellet stove. More information on low emission, EPA-certified wood stoves is available at <http://www.epa.gov/woodstoves/index.html>. The State of Montana offers an Alternative Energy Systems Tax Credit to offset the cost of purchasing and installing a low emission wood or biomass combustion device such as a pellet or wood stove. Besides the tax credit for qualifying wood stoves, individual Montana residents can claim a tax credit for energy conservation investments made to a home or other building. For more information on the energy conservation tax credits and ways to save energy, please see the *Warm Hearts, Warm Homes* webpage (<http://deq.mt.gov/Energy/warmhomes/index.asp>) on the Montana Department of Environmental Quality's website. (Section 3-2-8(b)(v)(B), *RCSR, Effects on the Natural Environment*)

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. (Section 3-2-8(b)(v)(B), *RCSR, Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health and Safety*)

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their structures tested for radon. Contact the Ravalli County Environmental Health Department for further information. (Section 3-2-8(b)(v)(B), *RCSR, Effects on Public Health & Safety*)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

Waiver of Protest to Creation of RSID/SID. Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (Section 3-2-8(b)(v)(B), *RCSR, Effects on Local Services*)

Living with Wildlife. Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the presence of wildlife such as elk, mule deer, white-tailed deer, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see FWP's web site at <http://fwp.mt.gov>. (*Section 3-2-8(b)(v), Effects on Agriculture, Effects on Natural Environment, & Wildlife and Wildlife Habitat*)

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- a. Homeowners must be aware of the potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- b. **Gardens, fruit trees** or orchards can attract wildlife such as bear and deer. Keep produce and fruit picked and off the ground, because ripe or rotting fruit or organic material can attract bears, skunks and other wildlife. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. The top rail should be made of something other than wire to prevent wildlife from entanglement. Netting over gardens can help deter birds from eating berries. To keep wildlife such as bears out of gardens and/or away from fruit trees, use properly constructed electric fences and maintain these constantly. (Contact FWP for information on "all-species electric fencing" designed to exclude wildlife from gardens and/or home areas, as well as a brochure for fence building with wildlife in mind.)
- c. All **garbage** should be stored in bear-resistant containers or indoors. If stored indoors, garbage may not be taken outdoors until the morning of garbage pick-up and containers must be brought back in that evening. Consult Montana Fish, Wildlife & Parks for information on purchasing or constructing bear-resistant trash storage sites. (If home sites are occupied seasonally, all garbage from the home and other buildings must be removed from the property before closing up for the season.)

- d. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in "an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer can attract mountain lions to the area.
- e. Bears can be attracted to food smells associated with **outdoor food storage**; therefore, freezers and refrigerators should not be placed outdoors on porches or in open garages or buildings. If a freezer/ refrigerator must be located outdoors, attempt to secure it against potential bear entry by using a stout chain and padlock around the girth of the freezer.
- f. **Birdseed** in bird feeders attracts bears. If used, bird feeders must: 1) be suspended a minimum of 20 feet above ground level, 2) be at least 4 feet from any support poles or points, and 3) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- g. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area when not under the direct control of the owner, and not be allowed to roam as they can chase and kill big game and small birds and mammals. Keeping pets confined also helps protect them from predatory wildlife. Under current state law it is illegal for dogs to chase hoofed game animals and the owner may also be held guilty (MCA 87-3-124).
- h. **Pet food and livestock feed** must be stored indoors, in closed sheds or in bear-resistant containers in order to avoid attracting wildlife such bears, mountain lion, skunk, and raccoon. **When feeding pets and livestock**, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- i. **Barbecue grills** should be stored indoors. Permanent outdoor barbecues grills are not allowed in this subdivision. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife. (Due to the potential hazard of fire and explosion, propane cylinders for gas-fueled grills should be disconnected and kept outdoors. Under no circumstances should propane cylinders be stored indoors.)
- j. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail) and no lower than 18 inches (at the bottom rail) in order to

facilitate wildlife movement. Barbed wire fences are not allowed in this subdivision, and this should avoid animals such as deer and/or elk becoming entangled in the wire or injuring themselves when trying to jump the fence.

- k. **Compost piles** can attract skunks and bears. If used they should be kept in wildlife-resistant containers or structures. Compost piles should be limited to grass, leaves, and garden clippings, and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Due to the potential fire hazard associated with decomposition of organic materials, compost piles should be kept at least 10 feet from structures.)
- l. **Apiaries (bee hives)** could attract bears in this area. If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.
- m. These wildlife covenants cannot be changed or eliminated without the concurrence of the governing body (Ravalli County Commissioners).

Covenants for use of Barley Creek and the southwestern riparian area portion of Nighthawk Meadows. Healthy, naturally functioning riparian areas benefit fish and wildlife, as well as agriculture and recreation. Encouraging the development of native vegetation (including shrubs and trees)—while *discouraging* actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and unrestricted livestock grazing—would help preserve the functionality of the creek and its riparian areas for fisheries, as well as protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding. The goal of the “no build/alteration zone” in the southwestern portion of the subdivision is to protect the creek and the riparian areas, as well as fisheries and wildlife. The following covenants (restrictions) are designed to help avoid damage to creek and its riparian areas, as well as possibly enhancing the natural functioning of the area. (Section 3-2-8(b)(v), Effects on Natural Environment, & Wildlife and Wildlife Habitat)

The “No Build/Alteration Zones (NBAZ)” are depicted on the plat. These zones are protected by the following covenants (restrictions) to help avoid damage to Barley Creek, its riparian areas, and wetlands, as well as enhancing these areas:

- a) No building, no new roads or alteration of the NBAZ is allowed.
- b) No motorized use. Only foot traffic is allowed in the NBAZ.
- c) It is illegal to modify the streambed or stream banks of a perennial stream without a “310” permit (Montana Natural Streambed and Land Preservation Act). Certain other actions near Barley Creek may require state and/or federal permit(s). Contact the Ravalli County Conservation District office in Hamilton for further information.
- d) Keep livestock out of stream and NBAZ. Develop off-stream watering facilities (e.g., water troughs) for livestock, and use fences if necessary to

keep livestock from trampling and grazing riparian vegetation. (See later covenant item for wildlife friendly fence guidelines.)

- e) Development of off-channel watering facilities cannot include water from Barley Creek if the lot(s) does not have valid water rights to the stream. If no water rights exist for, or have not been transferred to the property, then water cannot be diverted from the creek for any use. Residents should consult with the Montana Department of Natural Resources for questions on water rights.
- f) Wildlife-friendly fence guidelines. a) For wooden rail fences: no more than 3 rails, with the bottom of the bottom rail at least 18" off the ground; top of the top rail no higher than 42" off the ground; b) For wire fences: use smooth wire, no more than 3 wires, top wire no higher than 42" off the ground and bottom wire at least 18" from the ground. These designs allow calf elk, fawn deer and other wildlife to crawl under the fencing, while allowing adult elk and deer to jump the fence.
- g) Do not cut or remove live or dead vegetation, particularly shrubs and trees from the buffer zone. Wood (i.e., fallen branches, downed trees) is an important part of habitat and contributes significantly to overall slope stability, and dead trees function as important wildlife nesting habitat. Exception: proper use of chemicals or other methods of control (other than mowing) for noxious weeds is allowed, and planting appropriate native riparian vegetation (trees, shrubs) is allowed.
- h) Do not plant lawns or crops in the buffer zone. Leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems.
- i) If planting is planned for this area, the goal should be to re-establish native plant species appropriate to the site.
- j) In summary, allow riparian areas--Barley Creek and its NBAZ and the southwestern riparian area--to remain undisturbed. Do not modify them unless such change would help return the area to a natural state.
- k) These riparian covenants cannot be altered or eliminated without consent of the governing body (Ravalli County Commissioners).

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (*Section 3-2-8(b)(v)(B), RCSR, Effects on Agriculture and Natural Environment*)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Hamilton Rural Fire District has adopted the Fire Protection Standards, which require lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)

Access Requirements for Lots within this Subdivision. The Ravalli County Fire Council, which includes the Hamilton Rural Fire Department, has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Hamilton Rural Fire Department for further information. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)*

Archeological Resources. If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate. *(Section 3-2-8(b)(v), RCSR, Effects on Natural Environment)*

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The applicant shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services)*
4. The applicant shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services and Public Health & Safety)*
5. Prior to final plat approval, the applicant shall provide a letter from the Hamilton Rural Fire District stating that the applicants have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for all lots. Alternatively, the applicant may provide evidence that a \$500 per newly created lot contribution has been submitted to the Hamilton Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)*
6. The following statement shall be shown on the final plat: "The Ravalli County Fire Council, which includes the Hamilton Rural Fire District, has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can

accommodate the weight of a fire truck. Please contact the Hamilton Rural Fire District for further information". (Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety)

7. The final plat shall show a no-ingress/egress zone along the subdivisions frontage with Nighthawk Lane, except for the approved encroachment for the internal subdivision road, Tail Feather Lane. (Section 3-2-8(b)(v), Effects on Local Services and Public Health & Safety)
8. A stop sign and road name sign shall be installed at the intersection of Tail Feather Lane and Nighthawk Lane prior to final plat approval. (Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services and Public Health & Safety)
9. The applicant shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on Public Safety Services (Sheriff, E-911, and DES). The applicant shall ensure that the decided upon mitigation has been implemented prior to final plat approval. (Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services and Public Health & Safety))
10. The internal subdivision road shall be labeled as "public road and utility easement" on the final plat. (Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services)
11. The applicant shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on the Hamilton School District. The applicant shall ensure that the decided upon mitigation has been implemented prior to final plat approval. (Section 3-2-8(b)(v)(B), RCSR, Effects on Local Services)
12. The applicant shall provide evidence that mailboxes have been installed in accordance with the Hamilton Post Office's standards, and that the installation has been approved by the Hamilton Post Office prior to final plat approval. (Section 3-2-8(b)(v), RCSR, Effects on Local Services)
13. The final plat shall show no-build/alteration zones on all areas of the preliminary plat labeled in the legend as proposed riparian area, no build/alteration buffer (NBAB), or delineated wetland/seep. Public road and utility easements, as shown on the preliminary plat, shall not be included in the no-build/alteration zones, nor shall the driveway access to Lot 6 as shown on the final plat. (Section 3-2-8(b)(v)(B), RCSR, Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health & Safety)
14. The final plat shall show a no-build/alteration zone beginning 100 feet to southwest of Barley Creek and extending to the property boundary northeast of the creek. (Section 3-2-8(b)(v)(B), RCSR, Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health & Safety)

15. The applicant shall work with the Hamilton School District to determine whether or not a bus shelter and/or school bus turnout lane or turnaround should be constructed near the intersection of Nighthawk Lane and Tail Feather Lane. The applicant shall provide evidence that they have worked with the School District prior to final plat approval and any required improvements meet the minimum standards as decided upon by the School District. If any improvements are required, the applicant shall complete the improvements prior to final plat approval. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)
16. A five-foot wide, ADA compliant, trail shall be constructed within the 60-foot wide easement along Tail Feather Lane. The trail shall be shown on the final plat within the easement of Tail Feather Lane beginning at the cul-de-sac of Tail Feather Lane and ending at the possible bus shelter near Nighthawk Lane. The trail shall be constructed prior to final plat approval. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)
17. The Road Maintenance Agreement for the internal subdivision road shall include a provision outlining the maintenance of the trail which begins at the cul-de-sac of Tail Feather Lane and ends at the possible bus shelter near Nighthawk Lane. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)
18. The applicant shall finish the entire stretch of the easement on Lot 3 for the wastewater treatment system with topsoil and certified weed free grass seed prior to final plat approval. (*Section 3-2-8(b)(v), RCSR, Effects on the Natural Environment and Public Health & Safety*)
19. Tail Feather Lane shall be constructed with a paved travel surface of 20 feet and a minimum of 1-foot shoulders, for a total width of 22 feet. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)
20. The applicant shall construct the driveway for Lot 6, as shown on the preliminary plat, prior to final plat approval. The driveway must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services and Public Health & Safety*)
21. The applicant shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on County General Services. The applicant shall ensure that the decided upon mitigation has been implemented prior to final plat approval. (*Section 3-2-8(b)(v), RCSR, Effects on Local Services*)
22. The following statement shall be shown on the final plat: "Lots may require surface water engineering and potential hazard mitigation prior to construction". (*Section 3-2-8(b)(v), RCSR, Effects on Public Health & Safety*)

FINAL PLAT REQUIREMENTS (RAVALLI COUNTY SUBDIVISION REGULATIONS)

The following items shall be included in the final plat submittal, as required by the Ravalli County Subdivision Regulations, Section 3-4-4(a) et seq.

1. A statement from the project surveyor or engineer outlining how each final plat requirement or condition of approval has been satisfied shall be submitted with the final plat submittal.
2. One paper and two mylar 18" x 24" or larger copies of the final plat, completed in accordance with the Uniform Standards for Final Subdivisions Plats (ARM 8.94.3003). (One paper copy may be submitted for the first proofing.) shall be submitted prior to final plat approval. The final plat shall conform to the preliminary plat decision. The following features are required on the Final Plat:
 - a. Project name
 - b. Title block
 - c. Certificate of registered owner – notarized
 - d. Certificate of registered land surveyor with seal
 - e. Certificate of governing body approval
 - f. Signature block for Clerk and Recorder, preferably in lower right hand corner
 - g. Certificate of park cash-in-lieu payment
 - h. Other certifications as appropriate
 - i. North arrow
 - j. Graphic scale
 - k. Legal description
 - l. Property boundaries (bearings, lengths, curve data)
 - m. Pertinent section corners and subdivision corners
 - n. Names of adjoining subdivisions/certificates of survey
 - o. Monuments found
 - p. Witness monuments

- q. Acreage of subject parcel
 - r. Curve data (radius, arc length, notation of non-tangent curves)
 - s. Line data (lengths to tenths of a foot, angles/bearings to nearest minute)
 - t. Lots and blocks designated by number (dimensions/acreage)
 - u. Easements/rights of ways (location, width, purpose, ownership)
 - v. No-build/alteration zones
 - w. No-ingress/egress zones
 - x. Water resources (rivers, ponds, etc.)
 - y. Irrigation canals including diversion point(s), etc.
 - z. Existing and new roads (names, ownership, etc.)
3. The original copy of the preliminary plat decision shall be submitted with the final plat submittal.
 4. Any variance decisions shall be submitted with the final plat submittal.
 5. Copies of extensions of the preliminary plat approval period shall be submitted with the final plat submittal.
 6. The final plat review fee shall be submitted with the final plat submittal.
 7. A Consent to Plat form, including notarized signatures of all owners of interest, if the developer is not the underlying title holder, shall be submitted with the final plat submittal.
 8. A Title Report or updated Abstract dated no less than one (1) year prior to the date of submittal shall be submitted with the final plat submittal.
 9. The DEQ Certificate of Subdivision Approval or RCEH approval shall be submitted with the final plat submittal.
 10. Copy of the General Discharge Permit for Stormwater Associated with Construction Activity from the DEQ shall be submitted with the final plat submittal.
 11. The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision shall be submitted with the final plat submittal.
 12. A copy of the appraisal report, per Section 6-1-7, dated no less than six (6) months from the date of the submittal, for calculating the cash-in-lieu of parkland dedication and a receipt from the County Treasurer's Office for the payment of cash-in-lieu of parkland dedication, shall be submitted with the final plat submittal.
 13. Road and driveway approach and encroachment permits shall be submitted with the final plat submittal.
 14. Evidence of a Ravalli County-approved road name petition(s) for each new road shall be submitted with the final plat submittal.
 15. Engineering plans and specifications for all central sewer systems and any other infrastructure improvements requiring engineered plans shall be submitted with the final plat submittal.
 16. Final Road Plans and Grading and Storm Water Drainage Plan shall be submitted with the final plat submittal.
 17. Road certification(s) shall be submitted with the final plat submittal.

18. Utility availability certification(s) shall be submitted with the final plat submittal.
19. Road maintenance agreement, signed and notarized, shall be submitted with the final plat submittal.
20. A signed and notarized master irrigation plan, or if one is not required, written and notarized documentation showing how the water rights are to be divided or written and notarized documentation indicating that the water rights will be removed from the property shall be submitted with the final plat submittal.
21. A notarized statement from each downstream water user specifically authorizing any alteration, such as installation of culverts, bridges, etc., or relocation of an irrigation ditch shall be submitted with the final plat submittal.
22. Protective covenants to be filed with the final plat that are signed and notarized shall be submitted with the final plat submittal.
23. Copies of permits issued by the Bitterroot Conservation District or the US Army Corps of Engineers when construction occurs on environmentally sensitive features shall be submitted with the final plat submittal.
24. A copy of the letter sent to the appropriate school district(s) stating the applicant has made or is not willing to make a voluntary contribution to the school district to mitigate impacts of the subdivision on the school district that are not related to capital facilities; shall be submitted with the final plat submittal.
25. Signed and notarized homeowner association documents, including bylaws, covenants, and/or declarations shall be submitted with the final plat submittal.
26. Evidence that improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the applicant, Professional Engineer, or contractor, as may be appropriate and required, shall be submitted with the final plat submittal. A Professional Engineer's certification shall be required in any instance where engineered plans are required for the improvement. Alternatively, an improvements agreement and guaranty shall be required. (Refer to Section 3-4-2.)
 - a. Specific infrastructure improvements potential required for this subdivision are the installation of a stop sign and road name sign, installation of the CBU and concrete slab, construction of the internal subdivision road, installation of the wastewater treatment system, construction of the walking trail, construction of the bus shelter and turnout.

SUBDIVISION REPORT

COMPLIANCE WITH PREREQUISITES TO APPROVAL

Section 3-2-8(a) of the RCSR states that the BCC shall not approve or conditionally approve a subdivision application and preliminary plat unless it establishes by credible evidence that the proposed subdivision meets the following requirements:

A. Provides easements for the location and installation of any planned utilities.

Findings of Fact

1. Existing utilities are located along Nighthawk Lane. (Nighthawk Meadows Preliminary Plat)
2. A proposed 60-foot wide public road and utility easement along Tail Feather Lane will provide for additional utility easement. (Nighthawk Meadows Preliminary Plat)
3. *Existing and proposed utility easements are required to be shown on the final plat. (Final Plat Requirement 2)*
4. *Tail Feather Lane shall be labeled as a "public road and utility easement" on the final plat. (Condition 10)*

Conclusion of Law

The proposed subdivision application provides for utility easements.

B. Provides legal and physical access to each parcel within the subdivision and the notation of that access is included on the applicable plat and in any instrument transferring the parcel.

Findings of Fact

1. The subject property gains legal and physical access from U.S. Highway 93, West Bridge Road, Westside Road, Nighthawk Lane, and Tail Feather Lane. (Nighthawk Meadows Subdivision File)
2. U.S. Highway 93 is a state operated roadway. (MDT)
3. West Bridge Road is listed as a county-maintained road. (RCSR)
4. Westside Road is listed as a county-maintained road. (RCSR)
5. Nighthawk Lane is listed as a county-maintained road. (RCSR)
6. The internal road, Tail Feather Lane will provide legal and physical access to all lots within the subdivision via a 60-foot wide public road and utility easement. (Nighthawk Meadows Preliminary Plat)
7. A Road Maintenance Agreement outlines what parties are responsible for maintaining Tail Feather Lane and under what conditions. (Nighthawk Meadows Subdivision File)
8. *The final plat shall show a no-ingress/egress zone along the subdivisions frontage with Nighthawk Lane. (Condition 7)*
9. *Tail feather Lane shall be labeled as a "public road and utility easement" on the final plat. (Condition 10)*

Conclusion of Law

Legal and physical access will be provided to all lots within the subdivision.

- C. Assures that all required public or private improvements will be installed before final plat approval, or that their installation after final plat approval will be guaranteed as provided by Section [3-4-2] of these regulations.**

Finding of Fact

1. The applicant is required to submit evidence that the improvements have been made in accordance with the conditions of approval and requirements of final plat approval and certified by the applicant prior to final plat approval (Final Plat Requirements 1 and 26).
2. Specific infrastructure improvements potentially required for this subdivision are the installation of a stop sign and road name sign, installation of the CBU and concrete slab, construction of the internal subdivision road, installation of the wastewater treatment system, construction of the walking trail, construction of the bus shelter and turnout.

Conclusion of Law

The final plat requirements or an improvements agreement and guaranty will ensure that all improvements are installed.

- D. Assures that the requirements of 76-3-504(1)(j), MCA, regarding the disclosure and disposition of water rights as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

1. In an email dated August 25, 2008, Larry Schock of the DNRC Water Resources Division stated that because the average lot size is less than 5 acres, the water rights associated with the proposed subdivision are required to be addressed according to the Montana Code Annotated. (Exhibit A-1)
2. 76-3-504(1)(j), MCA states that when a subdivision creates parcels with lot sizes averaging less than 5 acres, the applicant is required to:
 - (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
 - (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or

- (iii) reserve and sever all surface water rights from the land.
- 3. The average lot size for this proposal is approximately 3.34 acres. (Nighthawk Meadows Subdivision File)
- 4. The applicant is reserving all of the water rights and severing those rights from the land. (Nighthawk Meadows Subdivision File)
- 5. According to the DNRC records, there are irrigation rights attached to this parcel from two sources: Canyon Creek and Sawdust Creek. (Nighthawk Meadows Subdivision File)
- 6. The subdivision has the following water rights: (Nighthawk Meadows Subdivision File)
 - (a) DNRC right 76H-107792-00, which is a stock water right from Sawdust Creek.
 - (b) DNRC right 76H-107793-00, which appropriates 342.55 gallons per minute (GPM) from Sawdust Creek.
 - (c) DNRC right 76H-107794-00, which appropriates 40 GPM from Canyon Creek.
- 7. After reviewing the DNRC abridged summaries and aerial photos for the water rights for this property, it appears that the property has a maximum of 20 historic irrigated acres. With a flow rate per acre of 7.45 GPM (Water Right No. 76H-107793-00) and 20 irrigated acres (7.45 GPM X 20 Acres) the maximum flow rate for this parcel is 149.00 GPM. (Bitterroot Research, Nighthawk Meadows Subdivision File)
- 8. At the present time, irrigation water from Canyon Creek (Water Right No. 76H-107794-00) has no functional conveyance system to the property. (Nighthawk Meadows Subdivision File)
- 9. *Condition 1 notifies individual lot owners that they have no water rights and taking water from the irrigation easement within the property is illegal.*

Conclusion of Law

With the requirements of final plat approval and the mitigating conditions of approval, this prerequisite has been met.

- E. Assures that the requirements of 76-3-504(1)(k) MCA, regarding watercourse and irrigation easements as set forth in Chapter 5 have been considered and will be accomplished before the final plat is submitted.**

Findings of Fact

- 1. 76-3-504(1)(k) MCA states that, except as provided in subsection (1)(k)(ii) (the proposal does not meet the criteria in this subsection), the applicant is required to establish ditch easements in the subdivision that:
 - (a) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water

under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

- (b) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - (c) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
2. The applicant is proposing a 20-foot wide irrigation easement centered on an existing collection ditch, which traverses Lots 3 and 6. (Nighthawk Meadows Subdivision File)
 3. The placement of structures or the planting of vegetation other than grass within the irrigation easement is prohibited. (76-3-504(1)(k) MCA).
 4. *To ensure that the provisions of 76-3-504(1)(k) MCA are met, the following requirement and condition shall be met prior to final plat approval:*
 - *The proposed 20-foot wide irrigation easement is required to be shown on the final plat, as shown on the preliminary plat. (Final Plat Requirement 2)*
 - *A notification that the placement of structures or the planting of vegetation other than grass is prohibited without the written permission of the ditch owner shall be included in the notifications document. (Condition 1)*

Conclusion of Law

With the requirement and condition of final plat approval, this prerequisite will be met.

F. Provides for the appropriate park dedication or cash-in-lieu, if applicable.

Findings of Fact

1. The application states that 0.55 acres are required to meet the parkland dedication requirement. (Nighthawk Meadows Subdivision File)
2. RCSR Section 6-1-5(a) requires a applicant to make a land donation to the County, make a cash donation to the County, reserve land within the development for the recreational uses for those within the development, and/or reserve land for one or more of the following purposes:
 - a. Protection of critical wildlife habitat;
 - b. Protection of cultural, historical, or natural resources;
 - c. Protection of agricultural lands; or
 - d. Protection of aesthetic values, including open space and scenic vistas
3. Pursuant to RCSR Section 6-1-5(a)(4)(b), the applicant is proposing to meet the parkland dedication requirement by making a cash donation to the County. (Nighthawk Meadows Subdivision File)
4. In a letter dated November 23, 2008, Bob Cron, representing the Ravalli County Park Board, stated that the Park Board concurs with the

applicant's proposal to provide cash-in-lieu to meet their parkland obligation. (Exhibit A-9)

5. In accordance with 76-3-621(4), MCA, "the governing body, in consultation with the applicant and the planning board or park board that has jurisdiction, may determine suitable locations for parks, playgrounds and giving due weight and consideration to the expressed preference of the applicant, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation." (See also Section 6-1-5(e), RCSR)
6. *If the BCC determines that cash-in-lieu is appropriate, the applicant will be required to hire an appraiser as outlined in Section 6-1-7. The BCC will determine whether or not the amount is acceptable (Final Plat Requirement 12)*

Conclusion of Law

The applicant has proposed parkland dedication that meets State Law.

COMPLIANCE WITH APPLICABLE REGULATIONS

Section 3-2-8(b) of the RCSR states that in approving, conditionally approving, or denying a subdivision application and preliminary plat, the BCC shall ensure the subdivision application meets Section 3-2-8(a) above, and whether the proposed subdivision complies with:

A. These regulations, including, but not limited to, the standards set forth in Chapter 5.

Findings of Fact

1. The lot layout as indicated on the preliminary plat meets the design standards in Chapter 5 of the RCSR. (Nighthawk Meadows Preliminary Plat)
2. This development plan proposal has followed the necessary application procedures and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations. (Nighthawk Meadows Subdivision File)

Conclusions of Law

1. The preliminary plat and subdivision application meet all applicable standards required in the RCSR.
2. The procedures for the application and review of this proposed subdivision as outlined in Chapter 3 of the RCSR have been followed.

B. Applicable zoning regulations.

Findings of Fact

1. The unincorporated areas of Ravalli County are not zoned, excepting voluntary zoning districts. (Clerk & Recorder's Office)
2. The property is not within one of Ravalli County's adopted voluntary zoning districts. (Nighthawk Meadows Subdivision File)

Conclusion of Law

There are no zoning regulations that apply to the property.

C. Existing covenants and/or deed restrictions.

Finding of Fact

1. There are existing covenants on the property recorded as Document # 585005 with the Ravalli County Clerk & Recorder. (Nighthawk Meadows Subdivision File)
2. The covenants restrict parcel use to single family residential. (Document # 144322)

Conclusion of Law

The proposal appears to comply with existing covenants.

D. Other applicable regulations.

Findings of Fact

1. Following are regulations that may apply to this subdivision:
 - Montana Subdivision and Platting Act, Title 76, Chapter 3, MCA
 - Montana Sanitation in Subdivisions Act, Title 76, Chapter 4, MCA
 - Ravalli County Subsurface Wastewater Treatment and Disposal Regulations
 - Montana Standards for Subdivision Storm Drainage (DEQ Circular 8)
 - Applicable laws and policies requiring permits related to development (U.S. Army Corps of Engineers, Bitterroot Conservation District, Ravalli County Road & Bridge Department, Montana Department of Transportation, Montana Department of Environmental Quality, etc.)
2. The applicants were made aware of the applicable regulations at the pre-application conference held on January 24, 2008. (Nighthawk Meadows Subdivision File)
3. Prior to final plat approval, the applicants are required to submit permits and evidence that they have met applicable regulations. (Section 3-4-4(a), RCSR)

Conclusion of Law

With the requirements of final plat approval, the application will meet all of the applicable regulations.

E. The MSPA, including but not limited to an evaluation of the impacts of the subdivision on the following criteria:

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The proposed minor subdivision on 20.06 acres will result in six lots that range in size from 2.00 acres to 5.03 acres. The property is located approximately 2 miles west of the City of Hamilton off Nighthawk Lane. (Nighthawk Meadows Subdivision File)
2. The subject parcel is classified for tax purposes as residential rural. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services)
3. The property is adjacent to agricultural properties. (Montana Cadastral Database created by Montana Department of Administration, Information Technology Services Division, Geographic Information Services and 2005 Aerial Photography created by the National Agricultural Imagery Program)
4. The property has not been used for agricultural purposes for several years. (Nighthawk Meadows Subdivision File)
5. In a letter dated August 27, 2008, State Conservationist Dave White of the Natural Resource Conservation Service confirmed that the NRCS soils staff would no longer utilize the farmland of local importance soils classification, per the request of the Bitterroot Conservation District. (Exhibit A-2)
6. During a phone conversation on September 24, 2008, Julie Ralston of the Bitterroot Conservation District summarized the reasoning for eliminating the farmland of local importance soils classification. (Exhibit A-3)
7. The NRCS Web Soil Survey indicates that there are no prime farmlands or farmlands of statewide importance found on the property. (NRCS)
8. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated spotted knapweed was found on the property. (Rivers Edge II Subdivision Application)
9. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
10. *Following are conditions and requirements of final plat approval that will mitigate the impacts of the subdivision on agriculture:*
 - *A notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2)*
 - *The approved Ground Disturbance and Noxious Weed Management Plan is required to be submitted prior to final plat approval. (Final Plat Requirement 11)*
 - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, the impacts of the subdivision on agriculture will be reduced.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

1. 76-3-504(1)(j), MCA states that when a subdivision creates parcels with lot sizes averaging less than 5 acres, the applicant is required to:
 - (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
 - (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
 - (iii) reserve and sever all surface water rights from the land.
2. In an email dated August 25, 2008, Larry Schock of the DNRC Water Resources Division stated that because the average lot size is less than 5 acres, the water rights associated with the proposed subdivision be addressed according the Montana Code Annotated. (Exhibit A-1)
3. The average lot size for this proposal is approximately 3.34 acres. (Nighthawk Meadows Subdivision File)
4. The applicant is reserving all of the water rights and severing those rights from the land. (Nighthawk Meadows Subdivision File)
5. According the DNRC records, there are irrigation rights attached to this parcel from two sources: Canyon Creek and Sawdust Creek. (Nighthawk Meadows Subdivision File)
6. The subdivision has the following water rights: (Nighthawk Meadows Subdivision File)
 - (d) DNRC right 76H-107792-00, which is a stock water right from Sawdust Creek.
 - (e) DNRC right 76H-107793-00, which appropriates 342.55 gallons per minute (GPM) from Sawdust Creek.
 - (f) DNRC right 76H-107794-00, which appropriates 40 GPM from Canyon Creek.
7. After reviewing the DNRC abridged summaries and aerial photos for the water rights for this property, it appears that the property has a maximum of 20 historic irrigated acres. With a flow rate per acre of 7.45 GPM (Water Right No. 76H-107793-00) and 20 irrigated acres (7.45 GPM X 20 Acres) the maximum flow rate for this parcel is 149.00 GPM. (Bitterroot Research, Nighthawk Meadows Subdivision File)
8. At the present time, irrigation water from Canyon Creek (Water Right No. 76H-107794-00) has no functional conveyance system to the property. (Nighthawk Meadows Subdivision File)

9. 76-3-504(1)(k) MCA states that, except as provided in subsection (1)(k)(ii) (the proposal does not meet the criteria in this subsection), the applicant is required to establish ditch easements in the subdivision that:
 - (a) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;
 - (b) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and
 - (c) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.
10. The applicant is proposing a 20-foot wide irrigation easement centered on an existing collection ditch, which traverses Lots 3 and 6. (Nighthawk Meadows Subdivision File)
11. The placement of structures or the planting of vegetation other than grass within the irrigation easement is prohibited. (76-3-504(1)(k) MCA).
12. An existing ditch which traverses the property and ends on Lot 2 will be obliterated as part of this project. There are no downstream water users which will be affected by this removal. (Nighthawk Meadows Subdivision File)
13. *To ensure that the provisions of 76-3-504(1)(k) MCA are met, the following requirement and condition shall be met prior to final plat approval:*
 - *The proposed 20-foot wide irrigation easement is required to be shown on the final plat, as shown on the preliminary plat. (Final Plat Requirement 2)*
 - *A notification that the placement of structures or the planting of vegetation other than grass is prohibited without the written permission of the ditch owner shall be included in the notifications document. (Condition 1)*
 - *A notification that lot owners do not have water rights and that taking water from the irrigation easement without a water right is illegal shall be included in the notification document. (Condition 1)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, there will be minimal impacts on agricultural water user facilities.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

Fire Department

1. The subdivision is located within the Hamilton Rural Fire District. (Nighthawk Meadows Subdivision File)

2. Notification letters were sent to the Hamilton Rural Fire District requesting comments on July 22, 2008 and November 5, 2008. (Nighthawk Meadows Subdivision File)
3. In a letter dated August 20, 2008, Lisa Wade, Secretary for the Hamilton Rural Fire District, stated that the Hamilton Rural Fire District and the City of Hamilton Fire chief had reviewed the subdivision proposal and recommended that the following mitigating measures are met: (Exhibit A-5)
 - a) All buildings should be built to IRBC code
 - b) All roads leading to and within the subdivision should be paved and constructed to County standards without any variances since access to the subdivision is a concern.
4. The Hamilton Rural Fire District has adopted the Fire Protection Standards, which address access, posting of addresses, and water supply requirements. (Exhibit A-6)
5. In a letter dated September 25, 2008, Ravalli County Fire Warden Ronald J. Ehli, on behalf of the Ravalli County Fire Council requested that all interior roadways for new development be constructed with a travel surface of 20 feet with a minimum of 1-foot shoulders, for a total width of 22 feet. (Exhibit A-14)
6. As shown on the preliminary plat, the proposed driveway for Lot 6 is approximately 200 feet in length. (Nighthawk Meadows Preliminary Plat)
7. *The following conditions will mitigate impacts of the subdivision on the Fire District:*
 - *Provisions in the covenants shall require that addresses are posted as soon as construction begins and that all driveways over 150 feet meet the standards of the Fire District. (Condition 2)*
 - *A provision in the covenants shall recommend that houses within the subdivision be built to IRBC standards. (Condition 2)*
 - *The applicant shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Conditions 2 and 4)*
 - *Prior to final plat approval, the applicant shall provide a letter from the Hamilton Rural Fire District stating that the applicant have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the applicant may provide evidence that a \$500-per-new-lot contribution has been made to the Hamilton Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Condition 5)*
 - *The following statement shall be shown on the final plat: "The Hamilton Rural Fire District has adopted the Fire Protection Standards. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Hamilton Rural Fire District for further information". (Condition 6)*

- *The applicant shall construct the driveway for Lot 6, as shown on the preliminary plat, prior to final plat approval. The driveway must have a minimum unobstructed travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. (Condition 20)*

School District

8. The proposed subdivision is located within the Hamilton School District. (Nighthawk Meadows Subdivision File)
9. It is estimated that 3 school-aged children will be added to the Hamilton School District, assuming an average of 0.5 children per household. (Census 2000)
10. Notification letters were sent to the Hamilton School District requesting comments on July 22, 2008 and November 5, 2008. (Nighthawk Meadows Subdivision File)
11. In a letter received November 14, 2008, Mr. Phillip Santee, Superintendent for the Hamilton School District stated the following: (Exhibit A-13)
 - a) The District will not provide transportation services to any student who does not live on county maintained roads and/or do not have an adequate bus turn around area.
 - b) The District would like the developer to insure that the children are provided with a safe area that is out of the weather to wait for the bus at the intersection of Nighthawk Lane and Tail Feather Lane.
 - c) The District has not conducted an impact fee study, but they would like the County to assess a mitigation fee that they feel is appropriate for this project.
12. County School Superintendent, Ernie Jean, has provided the Planning Department the Budget Per Pupil/Tax Levy Per Pupil information for Ravalli County. According to the document, the budget per pupil would be \$6,619 for the Hamilton School District (Exhibit A-7)
13. The applicant is proposing a \$500 per lot contribution to the Hamilton School District at first conveyance of each lot. (Nighthawk Meadows Subdivision File)
14. The County School Superintendent, Ernie Jean, sent a letter to the Ravalli County Commissioners stating that the Ravalli County Educational Transportation Committee recently adopted a resolution requesting that the Commissioners establish a requirement that the developers of each subdivision establish a shelter at a bus stop and turnout, or turnaround, if appropriate, at each subdivision entrance that is off a County owned and maintained road. (Exhibit A-12)
15. *To mitigate impacts on the School District:*
 - *The applicant shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on the Hamilton School District. The applicant shall ensure that the decided upon mitigation has been implemented prior to final plat approval. (Condition 11)*
 - *The applicant shall work with the Hamilton School District to determine whether or not a bus shelter and/or school bus turnout lane or turnaround should be constructed near the intersection of Nighthawk Lane and Tail Feather Lane. The applicant shall provide evidence that they have worked with the School District prior to final plat approval and any required improvements meet the minimum standards as decided upon by the*

School District. If any improvements are required, the applicant shall complete the improvements prior to final plat approval. (Condition 15)

Public Safety

16. The Ravalli County Sheriff's Office provides law enforcement services to this area. (Nighthawk Meadows Subdivision File)
17. Notification letters were sent to the Ravalli County Sheriff's Office requesting comments on July 22, 2008 and November 5, 2008, but no comments have been received from the Sheriff's Office. (Nighthawk Meadows Subdivision File)
18. This proposed subdivision is located approximately 3 miles from the Sheriff's dispatch in Hamilton. (Ravalli County GIS Data)
19. The average number of people per household in Ravalli County is 2.5. This subdivision is estimated to add 15 people to the County. (Census 2000)
20. Taxes from new residents may not be immediately available to law enforcement services, E-911, Office of Emergency Management (OEM) and Disaster & Emergency Services (DES). There is no available information on the average amount of time between when public safety services begin to serve a new residence and when public safety services receive tax money from that residence. (Staff Determination)
21. The applicant is proposing a \$500 per lot contribution to be paid into an account for Public Safety at first conveyance of each lot. (Nighthawk Meadows Subdivision File)
22. *The applicant shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on Public Safety Services (Sheriff, E-911, DES). The applicant shall ensure that the decided upon mitigation has been implemented prior to final plat approval. (Condition 9)*

Roads

23. There are six proposed residential lots within this subdivision. It is estimated at build-out that this subdivision could generate a total of 48 vehicular trips per day, assuming eight trips per day per lot. (Nighthawk Meadows Subdivision File)
24. The subject property gains legal and physical access from U.S. Highway 93, West Bridge Road, Westside Road, Nighthawk Lane, and Tail Feather Lane. (Nighthawk Meadows Subdivision File)
25. U.S. Highway 93 is a state operated roadway. (MDT)
26. West Bridge Road is listed as a county-maintained road. (RCSR)
27. Westside Road is listed as a county-maintained road. (RCSR)
28. Nighthawk Lane is listed as a county-maintained road. (RCSR)
29. The internal road, Tail Feather Lane will provide legal and physical access to all lots within the subdivision via a 60-foot wide public road and utility easement. (Nighthawk Meadows Preliminary Plat)
30. A proposed Road Maintenance Agreement outlines what parties are responsible for maintaining Tail Feather Lane and under what conditions. (Nighthawk Meadows Subdivision File)
31. The applicant is proposing a stop sign and road name sign at the intersection of Nighthawk Lane and Tail Feather Lane. (Nighthawk Meadows Subdivision File)

32. The road plans received preliminary approval from the Ravalli County Road and Bridge Department on August 28, 2008. (Nighthawk Meadows Subdivision File)
33. *To mitigate impacts on the roads leading to the subdivision, the following conditions and requirements shall be met:*
- *A copy of the General Discharge Permit for Stormwater Associated with Construction Activity from DEQ shall be submitted prior to final plat approval, if applicable. (Final Plat Requirement 10)*
 - *Prior to final plat approval, evidence of a Ravalli County approved road name petition for the new road shall be provided. (Final Plat Requirement 14)*
 - *Final Road Plans and Grading and Storm Water Drainage Plans for the internal roads shall be submitted with the final plat submittal. (Final Plat Requirement 16)*
 - *A Road Maintenance Agreement shall be signed, notarized, and submitted for the internal road. (Final Plat Requirement 19)*
 - *To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (Conditions 2 and 3)*
 - *A stop sign and road name sign shall be installed at the intersection of Nighthawk Lane and Tail Feather Lane prior to final plat approval. (Condition 8)*
 - *The easement for the internal subdivision road shall be labeled as a public road and utility easement on the final plat. (Condition 10)*
 - *The final plat shall show a no-ingress/egress zone along the subdivisions frontage with Nighthawk Lane. (Condition 7)*
 - *A notification of the limitation of access shall be included in the notifications document. (Condition 1)*
 - *The applicant shall submit a final approved approach permit from the Ravalli County Road and Bridge Department prior to final plat approval. (Final Plat Requirement 13)*
 - *The Road Maintenance Agreement for the internal subdivision road shall include a provision outlining the maintenance of the trail which begins at the cul-de-sac of Tail Feather Lane and ends at the possible bus shelter near Nighthawk Lane. (Condition 17)*
 - *Tail Feather Lane shall be constructed with a paved travel surface of 20 feet and a minimum of 1-foot shoulders, for a total width of 22 feet. (Condition 19)*

Ambulance Services

34. Ambulance services will be provided by Marcus Daly Memorial Hospital EMS Department. Marcus Daly Hospital was contacted on July 22, 2008 and November 5, 2008 but no comments have been received to date. (Nighthawk Meadows Subdivision File)

35. At the Planning Board Public Meeting, December 3, 2008, the applicants proposed \$250 per lot to mitigate impacts on local ambulance services. (Planning Board Minutes 12/3/2008)
36. *To mitigate impacts on emergency services, the applicant shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Condition 4)*

Water and Wastewater Districts

37. The applicant is proposing individual wells and a community wastewater treatment facility to serve all lots. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Nighthawk Meadows Subdivision File)
38. *To mitigate impacts of the subdivision relating to water and wastewater, the following requirements shall be met:*
- *The applicant is required to submit a DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*
 - *The applicant is required to submit final engineering plans and specifications for the central sewer system with the final plat submittal. (Final Plat Requirement 15)*

Solid Waste Services

39. Bitterroot Disposal provides service to this site. (Nighthawk Meadows Subdivision File)
40. Notification letters were sent to Bitterroot Disposal requesting comments on July 22, 2008 and November 5, 2008, but no comments have been received. (Nighthawk Meadows Subdivision File)

Mail Delivery Services

41. The United States Postal Service (USPS) sent a letter to the Planning Department on June 8, 2007 and an email on June 29, 2007 requesting that Collection Box Units (CBUs) be required for all subdivisions with eight or more lots (or if the local post office requests a CBU) and that the locations of the boxes be approved by the USPS (Exhibit A-8).
42. In a letter dated April 25, 2008, Tom Nuxoll, Delivery Supervisor for the Hamilton Post Office, stated that the best scenario for the US Post Office would be for the developer to place the boxes along Nighthawk Lane just prior to the internal subdivision road. (Nighthawk Meadows Subdivision File)
43. *To mitigate impacts on local services, the applicant shall provide evidence that mailboxes have been installed in accordance with the Hamilton Post Office's standards, and that the installation has been approved by the Hamilton Post Office prior to final plat approval..(Condition 12)*

Utilities

44. The proposed subdivision will be served by Northwestern Energy and Qwest Communications. (Nighthawk Meadows Subdivision File)
45. Notification letters were sent to the utility companies requesting comments on July 22, 2008 and November 5, 2008. No comments have been received by either utility company. (Nighthawk Meadows Subdivision File)
46. *The following requirements will mitigate impacts of the subdivision on local utilities:*

- *Existing and proposed utility easements shall be shown on the final plat. (Final Plat Requirement 2)*
- *The applicant shall submit utility availability certifications from Northwestern Energy and Qwest Communications prior to final plat approval. (Final Plat Requirement 18)*

General

47. Growth may impact the quality of general services that Ravalli County can provide to residents. (Staff Determination)
48. The applicants have proposed \$100 per lot to Ravalli County's General Fund to mitigate impacts on County general services. (Nighthawk Meadows Subdivision File)
49. The applicant shall negotiate adequate mitigation with the BCC to alleviate impacts of the subdivision on County General Services. The applicant shall ensure that the decided upon mitigation has been implemented prior to final plat approval. (Condition 21)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

Surface Water Features

1. Barley Creek traverses the northeast corner of the property. (Nighthawk Meadows Preliminary Plat)
2. A natural drainage area drains into a collection ditch which traverses the western boundary of the property. (Nighthawk Meadows Preliminary Plat)
3. A wetland delineation was performed by the consultant. The identified wetlands have been labeled on the preliminary plat. (Nighthawk Meadows Preliminary Plat)
4. Only the Army Corps of Engineers can legally determine whether wetlands are considered 'jurisdictional'. (USACE)
5. In order for wetlands to be considered 'jurisdictional' they need to be connected to 'waters of the United States'. (Staff Determination).
6. The term "waters of the United States" is defined as:
 - (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
 - (2) All interstate waters including interstate wetlands;
 - (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

- (iii) Which are used or could be used for industrial purpose by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United States under the definition;
- (5) Tributaries of waters identified in paragraphs (a)(1)-(4) of this section;
- (6) The territorial seas;
- (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 123.11(m) which also meet the criteria of this definition) are not waters of the United States.
- (8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. (US Army Corp of Engineers)
7. It does not appear the wetlands on the property are 'jurisdictional'. (Staff Determination)
8. The applicant applied for a Section 404 permit from the US Army Corp of Engineers on October 6, 2008 (Nighthawk Meadows Subdivision File)
9. The applicant is proposing a no-build/alteration buffer on the identified riparian area around Barley Creek and in the southwest portion of the property. (Nighthawk Meadows Subdivision File)
10. *To mitigate impacts on the Natural Environment, the applicant is required to complete the following:*
- *The final plat shall show no-build/alteration zones on all areas of the preliminary plat labeled in the legend as proposed riparian area, no build/alteration buffer (NBNAB), or delineated wetland/seep. Public road and utility easements, as shown on the preliminary plat, shall not be included in the no-build/alteration zones, nor shall the driveway access to Lot 6. (Condition 13)*
 - *The final plat shall show a no-build/alteration zone beginning 100 feet to southwest of Barley Creek and extending to the property boundary northeast of the creek. (Condition 14)*
 - *A provision explaining the no-build/alteration zones shall be included in the notifications document and protective covenants filed with the final plat. (Conditions 1 & 2)*
 - *The applicant shall finish the entire stretch of the easement on Lot 3 for the wastewater treatment system with topsoil and certified weed free grass seed prior to final plat approval. (Condition 17)*
 - *The applicant is required to submit the approved 404 permit from the US Army Corp of Engineers prior to final approval. (Final Plat Requirement 23)*
 - *The applicant shall construct the driveway for Lot 6, as shown on the preliminary plat, prior to final plat approval. The driveway must have a minimum unobstructed*

travel surface width of 22', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. (Condition 20)

Light Pollution

11. The addition of residences in this area has the potential to increase light pollution. Sky glow, glare, light trespass into neighbor's homes, and energy waste are some of the components of light pollution. (International Dark Sky Association)
12. *To mitigate the impacts of light pollution stemming from new construction, the notifications shall include a provision recommending full cut-off lighting on new construction. (Condition 1)*

Air Quality

13. This proposed subdivision would add 6 new homes to an area of existing low density development north of Stevensville. (Nighthawk Meadows Preliminary Plat) (Site Visit)
14. The Montana Department of Environmental Quality (DEQ) has reviewed the PM_{2.5} (particulate matter ≤ 2.5 micron) data collected in 2007 and incorporated it into the PM_{2.5} dataset from the previous three years (2004-2006). As part of that analysis, DEQ identified several communities that continue to experience poor air quality during certain time periods each year. Those communities are located in the following counties: Lincoln, Missoula, Silver Bow, Ravalli, Gallatin, Lewis & Clark, Flathead, Sanders, Yellowstone and Cascade. (Exhibit A-10)
15. Sources of particulate from this subdivision could include vehicles and wood-burning stoves. (Staff Determination)
16. *To mitigate impacts on air quality, the notifications shall include a recommendation that EPA-certified wood stoves should be installed to reduce air pollution and that wood burning stoves should not be used as the primary heat source. (Condition 1)*

Vegetation

17. The applicants submitted a Ravalli County Subdivision Noxious Weed Evaluation Form that stated spotted knapweed was found on the property. (Nighthawk Meadows Subdivision Application)
18. Any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, a plan shall be submitted to the weed board for approval by the board. (7-22-2152, MCA)
19. Healthy, naturally functioning riparian areas benefit fish and wildlife, as well as agriculture and recreation. Encouraging the development of native vegetation (including shrubs and trees), while discouraging actions such as grading, planting and irrigating lawns, mowing or cutting or clearing vegetation, and unrestricted livestock grazing, would help preserve the functionality of Barley Creek and its riparian areas for fisheries, as well as protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding. (Exhibit A-11)

20. According to the Montana Natural Heritage Program, the Palish Sedge and Common Sandweed were identified as a plant species of concern that could exist in the same section as the proposal. The applicant requested and received a waiver from the requirement to submit a sensitive species report for the species based on a lack of habitat on the property and because of the substantial no-build/alteration zones on the property. (Nighthawk Meadows Subdivision File)
21. There are areas on the plat identified as being a delineated wetland/seep. (Nighthawk Meadows Subdivision File and Site Visit)
22. *To mitigate impacts on natural environment, the following items will be required for final plat approval:*
 - *The approved Ground Disturbance and Noxious Weed Management Plan for the control of noxious weeds and the re-vegetation of all soils disturbed within the subdivision. (Final Plat Requirement 11)*
 - *A notification of the no-build/alteration zones shall be included in the notification document. (Condition 1)*
 - *A noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)*
 - *Riparian area covenants shall be included within the protective covenants filed with the final plat for this subdivision. (Condition 2)*

Historical/Archeological Sites

23. There are no known sites of historical significance on the property. (Nighthawk Meadows Subdivision File)
24. *To ensure that any possible historical sites are preserved, the following statement shall be included in the covenants: "If any archaeological, historic, or paleontological sites are discovered during road, utility, or building construction, all work will cease and the State Historic Preservation Office shall be contacted to determine if the find constitutes a cultural resource and if any mitigation or curation is appropriate". (Condition 2)*

Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

Findings of Fact:

11. The property is located in mapped elk winter range. A resident (year-round) herd of about 100 elk lives in the general area, including the river bottom. (Exhibit A-11)
12. In a letter received October 2, 2008, FWP stated that this property has an elevated probability of human/wildlife conflict and recommended including "living with wildlife" covenants. (Exhibit A-11)
13. FWP stated that wildlife such as elk, mule deer, white-tailed deer, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon and magpie. Numerous small mammal and bird species (including waterfowl and birds of prey) can be found nearby, as well as nesting birds. (Exhibit A-11)
14. Healthy, naturally functioning riparian areas benefit fish and wildlife, as well as agriculture and recreation. Encouraging the development of native vegetation (including shrubs and trees), while discouraging actions such as grading, planting

and irrigating lawns, mowing or cutting or clearing vegetation, and unrestricted livestock grazing, would help preserve the functionality of Barley Creek and its riparian areas for fisheries, as well as protect and improve wetland vegetation, enhance slope stability, and protect property from eroding banks and possible flooding. (Exhibit A-11)

15. According to the Montana Natural Heritage Program, the Bull Trout, Cutthroat Trout, Western Skink, Grey Wolf, Bald Eagle and Townsend's Big-Eared Bat were identified as animal species of concern that could exist in the same sections as the proposal. The applicant requested and received a waiver from the requirement to submit a sensitive species report for the species based on a lack of habitat on the property and because of the substantial no-build/alteration zones proposed. (Nighthawk Meadows Subdivision File)
16. *To mitigate impacts on wildlife, the following conditions shall be met:*
 - *The covenants shall include a living with wildlife section. (Condition 2)*
 - *The notifications document shall include a provision recommending full cut-off lighting on new construction. (Condition 1)*
 - *The no-build alteration zones will be shown on the final plat as proposed on the preliminary plat. (Conditions 13 & 14 and Final Plat Requirement 2)*
 - *The covenants shall include a provision explaining the no-build/alteration zones. (Condition 2)*
 - *A notification of the no-build/alteration zones shall be included in the notifications document. (Condition 1)*

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on Wildlife & Wildlife Habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

Traffic Safety

1. Access is proposed off Tail Feather Lane. (Nighthawk Meadows Subdivision File)
2. In a letter dated November 23, 2008, Bob Cron, representing the Ravalli County Park Board, stated the Park Board recommends that the applicants as part of their transportation system, for the safety of children and walking adults, construct a minimum five foot wide asphalt trail along one side of Tail Feather Lane from the cul-de-sac to the bus stop. (Exhibit A-9)
3. *The requirements and conditions listed under Roads in Criterion 3 (Effects on Local Services) will mitigate the impacts of the subdivision on traffic safety.*
4. *Prior to final plat approval a five-foot wide, ADA compliant, trail shall be constructed within the 60-foot wide easement along Tail Feather Lane. The trail shall be shown on the final plat within the easement of Tail Feather Lane beginning at the cul-de-sac of Tail Feather Lane and ending at the possible bus shelter near Nighthawk Lane. (Condition 16)*

Emergency Vehicle Access and Response Time

5. The proposed subdivision will be served by the Hamilton Rural Fire District, the Ravalli County Sheriff's Office, Ravalli County E-911, Ravalli County Office of

Emergency Services, and Marcus Daly Memorial Hospital EMS Department.
(Nighthawk Meadows Subdivision File)

6. *The requirements and conditions listed under Fire Department, Public Safety, Emergency Services, and Roads in Criterion 3 (Effects on Local Services) will mitigate the impacts of the subdivision on emergency vehicle access and response time.*

Water and Wastewater

7. The applicant is proposing individual wells and a community wastewater treatment facility to serve all lots. The applicants submitted water and sanitation information per MCA 76-3-622. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Nighthawk Meadows Subdivision File)
8. *To mitigate impacts of the subdivision relating to water and wastewater, the following requirements and condition shall be met:*
 - *The applicant is required to submit a DEQ Certificate of Subdivision Approval prior to final approval. (Final Plat Requirement 9)*
 - *The applicant is required to submit final engineering plans and specifications for the central sewer system with the final plat submittal. (Final Plat Requirement 15)*
 - *The applicant shall finish the entire stretch of the easement on Lot 3 for the wastewater treatment system with topsoil and certified weed free grass seed prior to final plat approval. (Condition 17)*

Natural and Man-Made Hazards

9. According to a document titled "Radon and You, Promoting Public Awareness of Radon in Montana's Air and Ground Water" published by DEQ and the Montana Bureau of Mines and Geology, there is a high potential for radon in Ravalli County. (DEQ)
10. The preliminary plat and soils map indicate there are soil types on the property that are considered severe for construction of roads and/or buildings. (Nighthawk Meadows Subdivision File)
11. *To mitigate impacts on the public's health and safety, the following conditions shall be met:*
 - *The notifications document shall include a statement regarding radon exposure. (Condition 1)*
 - *The notifications document shall include a provision recommending full cut-off lighting on new construction. (Condition 1)*
 - *A notification of severe soils shall be included in the notifications document. (Condition 1)*
 - *The final plat shall show no-build/alteration zones on all areas of the preliminary plat labeled in the legend as proposed riparian area, no build/alteration buffer (NBAB), or delineated wetland/seep. Public road and utility easements, as shown on the preliminary plat, shall not be included in the no-build/alteration zones, nor shall the driveway access to Lot 6. (Condition 13)*
 - *The final plat shall show a no-build/alteration zone beginning 100 feet to southwest of Barley Creek and extending to the property boundary northeast of the creek. (Condition 14)*

- *A provision explaining the no-build/alteration zones shall be included in the notifications document and protective covenants filed with the final plat. (Conditions 1 & 2)*
- *The applicant is required to submit the approved 404 permit from the US Army Corp of Engineers prior to final approval. (Final Plat Requirement 23)*
- *The following statement shall be shown on the final plat: "Lots may require surface water engineering and potential hazard mitigation prior to construction". (Condition 22)*

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safety.

Public Comment was then called for:

Engineer John Kellogg stated they spent two years analyzing this site due to the standing water and high ground water. There are two types of wetlands on this site; one is riparian at the central southern portion of the parcel which takes up lots 4 & 5, and a portion of lot 6. He noted there are also areas described as 'seeps' which come from ground water and irrigation water in Lots 3 and 6. They identified building sites locations that would not adversely affect this ground water. They also applied for a permit from the Army Corp of Engineers for a driveway within lot 6 due to the seepage and the cul-de-sac placement. There will be a drain field in n/w corner of this parcel which will allow the houses to pump into the system with a raised drain field about 2' above the ground surface. There will be re-vegetation on the surface of the drain field in order to meet DEQ standards. He noted there will be a landscape plan for the subdivision. This is not good agricultural land, so the impact is minimal. The site is within two miles of downtown Hamilton with services available.

John also noted they have proposed a number of mitigation fees: \$500.00 per lot to the Fire District; \$500.00 at first conveyance to the School District; \$500.00 to public safety per lot and \$100.00 per lot for the general fund. The proposed interior road, Tail Feather Lane will be paved to county standard. In regard to a bus shelter, they anticipate 3 students thus the District did not feel the need for a bus shelter. However, the Developer wants to designate an easement for future construction. This is considered a low density subdivision and the walk way initially proposed will not be required. There are 6 species of concern identified for the site, but further analysis shows the habitat does not lend itself to actually have the habitat on the site. Therefore there will be no further analysis on this issue. Fish Wildlife and Parks commented the Elk in the vicinity of this subdivision spend much of their time on the river below this subdivision, but do pass through the area. The elk herd in the area numbers approximately 100 head. Given this small acreage they see no effective way to mitigate this issue. The greatest concern is the cumulative impacts, thus the "living with wildlife" section is proposed in the covenants.

Randy addressed the public comment from John Horat who discussed the mitigation fee for ambulance service from the Planning Board. John Horat stated this is a private service so no contribution should be done.

Jo Leeseman lives next door and wanted more information about the water rights. John stated the water rights are severed, therefore there will be no draw from irrigation ditches. Currently the water is not being extracted from the ditches due to the amount of ground water. Duncan Jakes of PCI stated the water rights come from two creeks up the slope and there is no water to draw from in these creeks. He stated they have already covered up one ditch.

Jo addressed the large ditch that was dug by the developer a few years ago along the top of the parcel in a north east direction. She stated that ditch was diverting the water from the parcel. Duncan stated the water from that ditch will go to Nighthawk Lane.

Richard Gilman who lives on the Leeseman property stated this ditch was dug to drain and divert the water in order to dry the property. The water now runs into other ditches.

Carol Grant stated she lives across from this property on Nighthawk Lane. Since the Developer ditched and re-routed the normal water flow a few years back, before they ground water monitored the parcel, she now has standing water in the front section of her yard. She was out there on the first of December and you can actually sink into the ground. Now she can not run a riding lawn mower in that section.

John described how the ground water flows south in a easterly direction. There was a shallow ditch which ran from the top of the lot on the northern side to the southern side adjacent to Nighthawk Lane. When the water hits Nighthawk Lane it goes down a ditch following the road.

Dr. Turner (the Developer) stated this is surface water not ground water and they have not added any water.

Commissioner Driscoll asked if the ditch was something new. Jo and Carol stated the ditch is something new, in that the Developer had it dug just before the groundwater monitored. Carol reiterated how she now has a swamp in her front yard as the water now goes under the road and into her yard.

John stated the water crossing over Nighthawk Lane does not make sense to them as there are drainage ditches that channels the water to the east. He stated it is their intent to reconnect the water to the natural flow.

Carol stated now her feet get soaking wet in that area of her property now that the ditch was dug. The ditch was built in 2006.

Richard stated they have cattle on their property with a no spray zone and do not want the neighbors spraying. He asked if there was some way to police the covenants so the neighbors will not spray chemicals.

Carol stated when the Planning Board had the last meeting they stated the water problems would be taken care of. However, how will they know these issues will be taken care of. Two board members walked the property noting how wet it was and they had concerns.

Duncan agreed it is very wet on the surface and ground water is within the 5' depth. Thus there are two different sources of water going on here. The homeowners need to be aware of this so the homes are built away from the water. They have looked into this issue for engineering purposes on the house sites and road construction.

Randy stated Condition #22 is what the Planning Board recommends. John stated the ground water is still slightly deeper than when they monitored during the summer. It was consistent. What made the surface wet is the rain and snow on the groundwater.

Commissioner Grandstaff asked if there were any dry areas. John showed the riparian areas and seepage areas due to vegetation. The dry areas for houses were dry during rain and snow. Thus there are designated building sites available. In designing those sites they recognize the needed drainage. Commissioner Grandstaff asked how will they monitor this and make sure the home building follows the engineering. John stated they have no build zones in the major riparian areas. And, on the face of the plat there is a notification that drainage design must adequately addresses the water flow on the ground. Commissioner Grandstaff asked who checks up on that to make sure the homeowners do that. John stated the home owners do that, as they don't have any one to monitor that.

Richard questioned the major sewer system in the corner and who would monitor it. Duncan stated the homeowners association will take care of that. This is a simple system with alarms. They have designed this system, but it is unknown who will build it. The complicated part is getting the sewage up to the top portion of the parcel.

Commissioner Driscoll asked what part of this parcel are riparian lands. Duncan pointed to the parcel map stating 30-40% is a rough estimate. Duncan stated the neighbors to the west have a flood irrigation system, and that is why they engineered this system. The collection is there to help out lot 6. Commissioner Driscoll asked when the ditch was put in was it not illegal to divert the water. John stated as long as the Health Department was aware of this, they did nothing illegal. The ditch was put in to alleviate the groundwater problem.

Dr. Turner stated there was a ditch that went across lots 6 and 4 and they are closing this off.

Administrative Assistant to the Commissioners Glenda Wiles (and minute taker) indicated she lives on Nighthawk Road and was familiar with the ditch and drainage. She asked if the ditch that was dug a couple of years ago on the top portion of the parcel was

not illegal in that it was put in like a French drain to keep the water off the parcel due to the upcoming groundwater monitoring. She stated she takes minutes for the Board of Health and has since 1993, and the issues surrounding the water on the property was to keep the water off after the monitoring, plus the issue of diversion. She stated before the ditch was dug the water flowed over the entire parcel. Now the water is being diverted and it goes into Carol's property and runs out over and along the road. During spring run off the ditches that follow Nighthawk Lane cannot handle the flow because it is now diverted to them instead of the whole parcel. She noted it might be a simple fix to have the Road Department start doing the proper maintenance of the ditches that run along the road and also to clean out the vegetation. There is a culvert that goes under Nighthawk Lane at Westside and with the additional water now diverted into the ditches along the road way, they need to review this and see if the culvert is large enough. Just a quarter mile up Westside Road all the water washed the road out several years ago, so it is quite possible with added water they might have another road issue. Commissioner Chilcott stated the plan needs to handle the diverted water. The Road Department shouldn't handle that water, rather it is the responsibility of the Developer. Duncan stated there is a 12" culvert that crosses Nighthawk which is probably too small. They need to be properly sized and make sure it gets to the creek. Duncan stated he will work with the Road Department so the drainage will work due to the water diversion.

Commissioner Rokosch stated the ditch is not from irrigation practices, rather from ground water, he asked if the wetlands on the property are jurisdictional wetlands. John stated (as per conversations with permit with Army Corp of Engineers) this is non-jurisdictional as there is no direct contact with navigational water. Commissioner Rokosch stated the Army Corp of Engineers need to be made aware of this discussion and the wet land issue.

John stated if you look at the aerial photo there is a series of diversions and ponds, so ground water has been redirected and altered dramatically. So to redefine what is historic would be difficult.

Glenda noted this ditch was at least 3' in depth. John stated that was not correct it was only 1' in depth. Glenda stated when it was first dug it was that deep and now it has been covered to 1' or so.

Glenda also stated she would like to see covenants in order to keep homeowner dogs in control, due to their cows that are located on the Leeseman's property and the elk and deer in the area. She also noted while the covenants will address having control over the dogs, there is no enforcement of it. So those covenants are only as good as the homeowner's obedience to them. John stated that will be put in covenants.

Public comment was then closed.

The Commissioners began their deliberations.

Commissioner Rokosch noted the Planning Board had certain conditions.

The six criteria were then addressed as follows:

- 1) Effects on Agriculture: Commissioner Rokosch asked how long Dr. Turner has owned this property. Dr. Turner stated since 2005. There has been no agricultural use, simply pasture for cows and horses. Commissioner Driscoll asked about trees on the property, because since the water has been pulled from the property, the trees may fall down. Duncan stated the ground water pipes still show lots of ground water and the trees will have lots of water to keep them alive. Commissioner Rokosch stated classification on the soils don't show up on the list of important farm lands (USDA table of prime farm lands). **The Board concurred the affects on agriculture are sufficiently mitigated.**
- 2) Ag water user facilities: Dr. Turner stated they will let the water rights go. Commissioner Rokosch asked if they have contacted Fish Wildlife and Parks to consider letting those water rights for flow to the nearby creeks. This is simply a right, not a matter of letting the water flow to the creek. Dr. Turner stated the process is difficult and he does not want to get involved in that water right and flow issue. Duncan stated there is no way for this property to obtain their water rights. Commissioner Rokosch asked about the ditch they are going to abandon. Dr. Turner stated part of the ditch is already closed in and it will also be closed off. Commissioner Rokosch asked if the covenants will specify maintenance by the homeowners. John stated that will be part of the septic system and road maintenance agreement as discussed. Commissioner Rokosch asked if an entity such as a water trust is willing to take on the cost for those water rights, would Dr. Turner have any problem with that. Dr. Turner stated no he would have no problem if someone else wanted to deal with the water rights. **The Board concurred the agriculture water user facilities was sufficiently mitigated.**
- 3) Local Services: Randy stated the interior road will be a 20' wide travel surface with minimum of 1' shoulders. Duncan stated they planned on using 18' pavement with 2' gravel on each side as that is what the regulations stated. Commissioner Rokosch stated that is a problem, as they want 20' wide paved travel service with 1' shoulders. Commissioner Grandstaff stated width is something new as it was negotiated with all fire departments. John stated that will exceed the regulation standards.

Commissioner Grandstaff noted the letter from Dr. Ernie Jean showing the budget per pupil; however the Hamilton School District did not do an impact fee study. (Exhibit A-7 shows Hamilton at $2239 \times 3 = \$6,987.00$. Thus \$500.00 per lot is at odds with this calculation). Dr. Turner stated these lots won't have any children. Commissioner Chilcott stated the calculations are for the new lots so it would be for 5 lots. Commissioner Grandstaff stated the Commissioners negotiate this up front because there could be a lag time between approval of the subdivision and actual construction of the houses. Dr. Turner stated the taxes he just paid are for the first half of the year, so wouldn't it be only 6 months behind?

Commissioner Grandstaff stated no, it could be up to 2 years before those taxes are collected. She stated they collect this money up front because they can not track these monies after the lots are created and the houses are built. Dr. Turner stated since there are no houses built, someone could buy two lots and only build one house. Commissioner Driscoll noted the potential is there to build on the other lots in the future, so the money must be collected. Commissioner Grandstaff stated they have census and tax roles data so that is what they base their collection on. The Board cannot base the amount of monies on something theoretical. Commissioner Chilcott stated one thing that is not theoretical is that there are 6-buildable lots. Dr. Turner stated for the developer to pay up front for a lot that has not been sold is difficult. He stated he prefers to pay at the first conveyance. Commissioner Grandstaff stated the county does not have an adequate way of tracking and collecting, so they collect up front. Dr. Turner stated he is trying to look at the big picture; will there be fire contributions and school. Commissioner Grandstaff suggested moving on and then they can come back to this part. In regard to the pathway, the schools have asked for this bus shelter and turn out. John stated they talked to the school superintendent and he stated they did not need this right now. Rather, a shelter with an easement could be negotiated. Commissioner Driscoll stated she would like a pathway for the people to walk. Duncan stated there is a 60' right of way so a 5' wide path has room to be built. It was noted the Planning Board removed Condition #16 (the pathway) due to the low density of houses to be built. John stated they wanted to anticipate the future and if there is more demand for a bus shelter and right of way for the pathway, there will be space in the easement for them to be built. Randy stated the Park Board still wanted to see the pathway due to the road grade. Commissioner Rokosch stated part of this consideration is what is being proposed and the potential for higher density. Duncan stated there is no way to obtain more density due to the community system. The groundwater dictates this. Commissioner Rokosch stated in the future they could end up with a treatment system and they must consider a higher density. It only takes one fatality thus liability must be considered. Dr. Turner stated if those are the Commissioners' concerns, then they need to look at this all over the county, not just his subdivision. Commissioner Grandstaff stated they are looking at this issue over the entire county. Dr. Turner stated the Commissioners are piling a lot of expenses for the developer, particularly when they could construct the path after they sell the lots. Commissioner Chilcott stated there is a way to stop the density, by way of covenants or deed restrictions. Dr. Turner agreed stating he would have no problem with that. Commissioner Chilcott stated this is low density and the need for an asphalt path is overkill. Dr. Turner stated they could construct a gravel path when the homeowners see the need. Commissioner Driscoll stated she sees the pathway could be shoddily built if you left it up to the homeowners. Randy stated the language in the conditions requires ADA compliancy. Dr. Turner asked if this can this be done after lot conveyance. Commissioner Chilcott stated after final plat the county loses control. Dr. Turner stated it would be easier to put the path way in after the fact so the trucks don't ruin the path way. Randy stated the maintenance of the trail is addressed in condition # 17. Discussion of

not having the pathway built and only requiring an easement took place. Randy stated the Developer could do a subdivision improvement agreement (letter of credit) in order to do the improvements after a year. Commissioner Chilcott stated the letter of credit will be for 125% of the total amount. Dr. Turner stated at least a letter of credit will allow him to make his choice at a later time in the subdivision process. Chris Cobb of PCI stated they have an email from Mr. Santee (Hamilton School District) to address the easement for the bus shelter. Randy stated they should add a condition to show the easement for a future bus shelter, or amend Condition #15. The Board concurred to amend condition #15 in order to show the easement is in place. In regard to public safety; Commissioner Grandstaff asked if they are offering \$500.00 per lot? Dr. Turner stated he agrees to \$500.00 per lot for fire and public safety and asked if they could still negotiate on the school contribution. Commissioner Grandstaff stated that is correct. In regard to roads, Commissioner Grandstaff asked if the situation is addressed for the water drainage. John stated they will assure the drainage plan will take care of the anticipated additional flow from the diversion ditch next to Nighthawk Lane. Commissioner Driscoll stated the water will ruin the road so it needs to be addressed. Commissioner Rokosch stated the road department needs to have some input on what they are proposing. Randy stated WGM reviewed and approved the road plans, but they have not considered the collection ditch. This might be more of a DEQ approach. Commissioner Chilcott confirmed they are looking at the water that is going to be obtained from the wastewater ditch, and that it terminates at Nighthawk Lane, and further, they are going to make sure it gets to the culvert. Duncan stated they are going to have to look at this in regard to the size of culvert etc. John stated the issue might be simple maintenance as Glenda suggested. Commissioner Rokosch addressed the pro rata contribution. Randy stated he has not calculated it; an estimate is \$27,700.00. Chris stated the roadway form David Ohnstad filled out includes some culverting on Nighthawk, Westside and West Bridge. Commissioner Chilcott stated it is incumbent on this Board to direct the Road Department to either do this or have it done recouping the costs from the Road Department if necessary. Commissioner Grandstaff stated since they have neighbors testifying to the water running over the road, we need to address this up front and not later. John stated they can visit with David and make sure the timing meets with the road department schedule. Randy stated pro rata is in chapter five and to do any off set (allowing the developer to do the work) would require a variance. The Board can direct the Road Supervisor to make this a priority. Commissioner Rokosch stated he does not see this drainage as sufficient. John stated this is based on the Army Corp of Engineers and DEQ approval. The drainage plan was limited to the new construction, but now they are looking at a broader perspective. Commissioner Chilcott stated the Commissioner's preliminary approval will be based on Army Corp of Engineers and DEQ as the county does not have that expertise. Commissioner Grandstaff stated Glenda brought up a good point, that while the water did run over the whole parcel, now it is being diverting into a specific point. John stated the water is being slowed by a blockage, and what they would like to do is re-open the channel along the roadway. What DEQ and Environmental Health will do is look

at these comments and incorporate them into the review process to make sure that is addressed under the DEQ submittal. Commissioner Grandstaff stated it becomes their responsibility to address where the water goes once it reaches the corner of the property. John stated they are channeling it and increasing the water along the channel, but by the time it hits the south/east corner of the parcel the water flow should be the same. Maggie Turner stated west of their property is flood irrigation. If she wasn't doing a subdivision, and she did not want their flood irrigation, she would still have a problem with that water. Therefore they simply need to see what they need to do with the water. Glenda stated the issue may be as simple as maintenance of the ditches and increasing the size of one culvert as it hits Nighthawk and Westside. Commissioner Rokosch stated the ditches need to be designed to prevent any overtopping and degradation of Nighthawk Lane. Commissioner Grandstaff stated she is not trying to cause a problem; she is simply doing her duty to make sure no harm is being done by the proposed subdivision. Commissioner Chilcott stated with the testimony of the road being overtopped, without the ditch and now with the ditch, the landowners are responsible to mitigate what they have created. Commissioner Grandstaff stated DEQ needs this information. She sits on the Hamilton Planning Board and sees the need to increase the size of culverts as water comes into the Hamilton area. She does not have the expertise to know if a 12" or 18" size of culvert is necessary or not. Commissioner Rokosch stated if DEQ states a larger size culvert than the pro rata requirements, then we need to address that issue also. He asked when they obtain those DEQ approvals. Randy stated those are required prior to final plat. Commissioner Rokosch stated if DEQ requires any infrastructure requirements beyond the pro rata, those additional costs will be assessed and paid prior to final plat. Dr. Turner asked if they are going to take whatever DEQ says. The Board concurred it would be a pro rated share of the increase. In regard to ambulance services, Commissioner Grandstaff noted they cannot accept on behalf of a private entity. She did not think this issue should be addressed right now. She stated the developer could address this outside of the subdivision requirements, as they do not want to establish any precedence on one subdivision application. Commissioner Rokosch asked about the water treatment. Duncan addressed the 'E1 System' that takes effluent to another location. Each system will have a grinder and they will pump to one location and into several septic tanks where a grinder pumps into one system. The E1 System works with the raised mound system. In regard to general services, the request is \$100.00 per lot to general fund. Dr. Turner stated this is supposed to be at first conveyance per the Planning Board so that is why he would like to see what all the costs are first. Commissioner Grandstaff stated that is a good point. Commissioner Rokosch stated in regard to general services, those costs came up to \$250.00, but they are only offering for \$100.00. **It was concurred no mitigation at this point, it will be addressed later.**

- 4) Natural Environment: Commissioner Rokosch asked in regard to the riparian areas, what is that meant to be the line that has the north/south arrows? Duncan addressed that concern on the delineated wetlands map (i.e. no build zones and

specific building sites). Duncan noted the Corp wanted water continuity separated by the road. Commissioner Driscoll asked about gravel check dams. Duncan stated those are to slow the water down on the ditches. Commissioner Rokosch asked about lot 3 and the water seep for the no build zone. John showed the restrictions on the lots as per the preliminary plat. Commissioner Rokosch asked if the covenants are addressing the wetlands. Chris stated those are requested by the FWP in regard to Barley Creek. John stated the specific covenants address Barley Creek and the south/western riparian area. Commissioner Rokosch asked about the area in between the south/western and north western area. Randy stated when Fish Wildlife and Parks addressed this, the seeps were not listed on the plat. He suggested they address Barley Creek and the no build alteration zones so it would include all the riparian areas as noted. He stated Condition #13 addresses this and labels them as no build and alteration zones. **The Board concurred this criteria is sufficiently mitigated.**

- 5) Wildlife and wildlife habitat: Commissioner Grandstaff stated this condition might be problematic due to another subdivision (Saddle Hills) which is in litigation. This is the 42nd subdivision reviewed in 18 months. One of the issues in Saddle Hills is that it is in the winter range, and setting aside certain amounts of ground, such as 20 acres was deemed insufficiently mitigated. In the other subdivision Mack Long stated moving the lots or a change of design or density does not mitigate this issue. Since the Commissioners are being sued about this very issue, she is not sure how to get around that. John stated this is not critical elk habitat. The winter range is along the foothills that extend up from the river corridor. Crucial winter range when snow pack is at its maximum is northwest of this location. Saddle Hills was in or near critical winter range. In this case it is surrounded by medium development with some 1 to 1.5 acre lots to the north, then higher density as you go towards Hamilton. With that density in mind, their mitigation was to incorporate the FWP covenants, particularly in regard to corralling dogs. Commissioner Grandstaff stated the recommendation seems ambiguous. Commissioner Rokosch stated he is not sure the covenants apply to that consideration of winter range, as that is a strong statement in the FWP letter. Commissioner Chilcott stated he does not see any denial recommendation or opposition of the subdivision by FWP. In the Saddle Hills Subdivisions they developed and identified a plan of elk habitat. He stated he has a fundamental problem with the state taking private land holdings, using them for their use and not for those who pay taxes on it. Commissioner Chilcott stated FWP offered several options to mitigate this. John stated this is a small patch of ground and should not have too much of an impact. Commissioner Driscoll stated it is difficult to not look at the cumulative effect. John stated this is low density and a large part of this is due to the groundwater issues, but because of the riparian areas that they cannot build on, this design does provide a travel corridor for the wildlife. The density is an issue that addresses the question of mitigating the impacts to the elk herd and the density is similar to what is similar in other surrounding areas. Elk herds move across Highway 93, so these houses will not stop their migration. Commissioner Grandstaff asked what John's opinion was

on the 75' wide no build buffer (Exhibit 8-11). John stated they are complying with those recommendations, but he thought those were from Barley Creek which is 100' setback. Commissioner Rokosch asked about the language in the recommended covenants from FWP that were not included in the staff report covenants. Randy stated those conditions were shown as a 100' setback (condition #14). John stated their designation on the plat addresses what FWP recommended. Commissioner Grandstaff stated on page 7 of the staff report the covenants encourage native vegetation. She asked if they could change the wording to discourage planted vegetation. Dr. Turner stated they have a 100' buffer zone so that should satisfy that. Commissioner Grandstaff concurred. Commissioner Rokosch brought back up the winter range. He stated there are different interpretations of what FWP is saying. He would like to have someone here from FWP. Commissioner Grandstaff agreed because what they say is somewhat ambiguous. She stated it is hard to understand what they want. John stated if they (FWP) had their 'druthers' there would not be any development in this band, but since there is low density development and this is a small piece of ground, it would be silly to not develop this land. In lieu of that, they would like certain steps taken to allow the wildlife to continue traveling. John stated from the cadastral map it shows the parcels surrounding this property. Commissioner Rokosch stated he would like to have someone from FWP explain their letter in order to see the effective mitigation. Dr. Turner stated if they do not subdivide, there will be a house on that parcel, so it will be developed one way or the other. Therefore it will change no matter what the Commissioners do today. Maggie stated they lived across from this area for many years and never saw any elk or elk droppings. Planner Tristan Riddell (now present) addressed Saddle Hills and the FWP letters, noting those letters were site specific. Commissioner Rokosch stated the way he reads the FWP letter is that it is not favorable towards the subdivision. He stated the winter range is different than the other wildlife, because it is winter range specifically for elk. John stated in the Seeley Swan area, the FWP are concerned about the elk, and they usually list the number of elk on the property. Therefore from this subdivision, he does not see this particular parcel they are critically concerned about. Duncan suggested they call the FWP now. Chris stated they address the wildlife friendly guidelines, so they are not saying to deny it. Commissioner Grandstaff stated they do not say to deny, but they have never gotten a letter like this, thus she can not reconcile those comments. Commissioner Rokosch stated the deadline for decision is January 30th. Commissioner Driscoll stated when FWP writes these types of letters, they need to specifically address elk. Dr. Turner wanted to have this decided today, Commissioner Grandstaff stated this has too many issues and will not be decided today. Commissioner Rokosch addressed the cottonwoods and species of special concern. He suggested there is habitat for a bat, and asked if the habitat was mitigated by the buffer zone. He also stated they are not just looking at what is on the property today, but what could be there tomorrow. Tristan stated the riparian zone and no build zone would enhance wildlife in the area. Commissioner Grandstaff stated they cannot vote on this in regard to the FWP letter. Therefore, she suggested they move to Criterion #6 (Commissioner Chilcott left the meeting

for a conference call with MACo Urban Counties for legislation issues). **This issue was not mitigated at this time.**

- 6) Public Health and Safety: Commissioner Grandstaff noted the easements for bus shelter and pathway were approved. Response time for emergency services seems appropriate. Commissioner Rokosch stated the traffic safety issue is the pathway which will be addressed. **The Board concurred that this is sufficiently mitigated.**

Commissioner Grandstaff then made a recap of the previous discussion/mitigation:

- No vote on #3 for school contribution.
- No vote on #5 due to FWP.
- Unresolved issues: need for fire department 20' paved internal road with 1' shoulders; dedicate water rights to Water Trust if they will pay for and if even possible; placing deed restriction for further subdivision; pathway is addressed in the staff report being 5' wide with ADA compliance; letter of credit or subdivision improvements under regulations for later construction of the pathway; road department to review culverts will be a priority; direction to DEQ for infrastructure review/improvements for water runoff; school mitigation as offered is not adequate but change to five lots due to existing lot; more testimony from FWP to clarify agency comment letter.

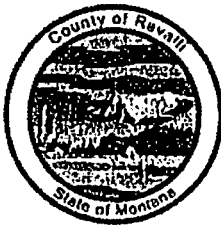
Commissioner Rokosch questioned the road maintenance under condition #17. Randy stated the road maintenance agreement is specific to road and public access easement. Duncan stated DEQ wants an agreement. Randy stated they can do that but it has to be separate from the road maintenance.

Commissioner Grandstaff then recapped who is doing what from the issues as noted above:

- The issue of the 20' road is the responsibility of PCI to review/research
- Water Rights dedication is Commissioner Rokosch's responsibility to review/research
- Letter of Credit for path will be the responsibility of the Developer and is found under the regulations
- Culverts issue with Road Department is the Board's responsibility
- DEQ infrastructure is PCI's responsibility
- Contacting FWP is Planning's responsibility

In regard to the school mitigation, Dr. Turner suggested they go from \$500.00 to \$750.00 since it is at final plat; \$500 to fire and \$500 to public safety for final with five lots; \$200 to general fund for five lots. Dr. Turner concurred. It was noted the pro rata may change depending upon what DEQ recommends. **The Board concurred.**

Commissioner Rokosch made a motion to continue this meeting until January 8th at 2:00. Commissioner Driscoll seconded the motion and all voted "aye". Commissioner Chilcott not present at this vote.



REQUEST FOR COMMISSION ACTION

OG-08-12-988

BCC Hearing: December 22, 2008 @ 9:00 a.m.
Request: To approve the Nighthawk Meadows Major Subdivision

I. Action Requested

This is a request from Mountain Magic, LLC, represented by Professional Consultants, Inc., to approve the Nighthawk Meadows Major Subdivision.

II. Subdivision Proposal

- The Nighthawk Meadows Subdivision is a 6-lot major subdivision of 20.06 acres located west of Hamilton.
- The applicant is proposing cash-in-lieu of parkland dedication.

III. Planning Staff Recommendation

Planning Staff recommends conditional approval of the subdivision. (See attached Staff Report.)

IV. Planning Board Recommendations

The Ravalli County Planning Board conducted a public meeting on this subdivision proposal on November 5, 2008. The Board reviewed the six subdivision criteria, as summarized below:

1. **Effects on Agriculture.** *Nine Board members found the effects sufficiently mitigated. (Staff note: This is in agreement with the Staff Report findings.)*
2. **Effects on Agricultural Water-user Facilities.** *Eight Board members found the effects, sufficiently mitigated and one Board member abstained. (Staff note: This is in agreement with the Staff Report findings.)*
3. **Effects on Local Services.** *Two Board members found the effects sufficiently mitigated and seven Board members found the effects to be not sufficiently mitigated.*
4. **Effects on the Natural Environment.** *Three Board members found the effects sufficiently mitigated and six Board members found the effects to be not sufficiently mitigated.*
5. **Effects on Wildlife and Wildlife Habitat.** *Seven Board members found the effects were sufficiently mitigated and two Board members found the effects were not sufficiently mitigated. (Staff note: This is in agreement with the Staff Report findings.)*
6. **Effects on Public Health and Safety.** *Three Board members found the effects sufficiently mitigated and six Board members found the effects were not sufficiently mitigated.*


After voting on the six review criteria, the following motion was made by the Board:

To **approve** the Nighthawk Meadows Major Subdivision based on the findings of fact and conclusions of law in the staff report with the following amendments:

- Amending Condition 5 to state: The applicant shall submit a \$500-per-lot voluntary contribution to the Hamilton Rural Fire District at first conveyance of all lots.
- Amending Condition 9 to state: The applicant shall submit a \$500-per-lot voluntary contribution to the Ravalli County Treasurer's Office to be deposited into an account for Public Safety Services (Sheriff, E-911, OEM) at first conveyance of all lots.
- Amending Condition 11 to state: The applicant shall submit a letter or receipt from the Hamilton School District stating that they have received a \$500-per-lot voluntary contribution at first conveyance of all lots.
- Amending Condition 15 to state: The applicant shall work with the Hamilton School District to determine whether or not a bus shelter and/or school bus turnout lane or turnaround should be constructed near the intersection of Nighthawk Lane and Tail Feather Lane. The applicant shall provide evidence that they have worked with the School District prior to final plat approval. If any improvements are required, the applicant shall complete the improvements prior to final plat approval.
- Removing Condition 16: A five-foot wide, ADA compliant, trail shall be constructed within the 60-foot wide easement along Tail Feather Lane. The trail shall be shown on the final plat within the easement of Tail Feather Lane beginning at the cul-de-sac of Tail Feather Lane and ending at the possible bus shelter near Nighthawk Lane. The trail shall be constructed prior to final plat approval.
- Adding Condition 18: The applicant shall submit a letter or receipt from Marcus Daly Memorial Hospital EMS Department stating that they have received a \$250-per-lot voluntary contribution at first conveyance of all lots.
- Adding Condition 19: The following statement shall be shown on the final plat: "Lots may require surface water engineering and potential hazard mitigation prior to construction".

The Board voted 8 -1 to approve this motion.

Please see the attached DRAFT Planning Board December 3, 2008 Meeting Minutes for details. A digital recording of the meeting is available.

Attachments:	Staff Report DRAFT Planning Board Meeting Minutes – December 3, 2008 Subdivision Application
Staff:	Randy Fifrick 
Date:	December 8, 2008